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10 CONSUMER ADVOCACY GROUP, INC.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 CONSUMER ADVOCACY GROUP, INC.,
14 in the public interest,

15 Plaintiff,

16 v.

17 DOLLAR KINGS, INC., a California
18 Corporation;
19 DIME ENTERPRISES INCORPORATED, a
20 California Corporation;
21 DOLLAR KING LOS FELIZ, a business
22 entity form unknown;
23 KOOBA, LLC, a Delaware Limited Liability
24 Company;
25 and DOES 1-100,

26 Defendants.

CASE NO. 19STCV37064

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

[Assigned for All Purposes to the Hon.
Michelle Williams Court, Dept. 74]

Complaint filed: October 16, 2019

27 **1. INTRODUCTION**

28 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer
Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the public interest,

1 and Defendant Mystic Apparel, LLC (“Defendant”) with each a Party to the action and
2 collectively referred to as “Parties.”

3 1.2 **Defendants and Covered Products**

4 1.2.1 CAG alleges that Defendant is a New York Limited Liability Company which
5 employs ten or more persons. For purposes of this Consent Judgment only, Defendant is deemed
6 a person in the course of doing business in California and subject to the provisions of the Safe
7 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
8 25249.6 et seq. (“Proposition 65”).

9 1.2.2 CAG alleges that Defendant manufactures, sells, and/or distributes consumer
10 products in California.

11 1.3 **Listed Chemicals**

12 1.3.1 Di (2-ethylhexyl) Phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate
13 and Bis (2-ethylhexyl) Phthalate, has been listed by the State of California as a chemical known
14 to cause cancer and birth defects or other reproductive harm.

15 1.3.2 Diisononyl Phthalate (“DINP”) has been listed by the State of California as a
16 chemical known to cause cancer.

17 1.4 **Notices of Violation**

18 1.4.1 On or about August 21, 2019, CAG served a “60-Day Notice of Intent to Sue for
19 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-01627”)
20 (“August 21, 2019 Notice”) that provided Defendant with notice of alleged violations of Health
21 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DINP
22 contained in certain Suitcases with Plastic Components sold, manufactured, and/or distributed by
23 Defendant in California. No public enforcer has commenced or diligently prosecuted the
24 allegations set forth in the August 21, 2019 Notice.

25 1.4.2 On or about October 2, 2019, CAG served a “60-Day Notice of Intent to Sue for
26 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-01864”)
27 (“October 2, 2019 Notice”) that provided notice of alleged violations of Health & Safety Code
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1 § 25249.6 for failing to warn individuals in California of exposures to DINP contained in certain
2 Duffel Bags with Polymer Components sold, manufactured, and/or distributed by Defendant in
3 California. No public enforcer has commenced or diligently prosecuted the allegations set forth
4 in the October 2, 2019 Notice.

5 1.4.3 On or about October 30, 2019, CAG served a “60-Day Notice of Intent to Sue for
6 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-02062”)
7 (“October 30, 2019 Notice”) that provided Defendant with notice of alleged violations of Health
8 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DINP and
9 DEHP, respectively, contained in certain Duffel Bags and Kids Dresses, respectively, sold,
10 manufactured, and/or distributed by Defendant in California. No public enforcer has
11 commenced or diligently prosecuted the allegations set forth in the October 30, 2019 Notice.

12 1.4.4 On or about December 4, 2019, CAG served a “60-Day Notice of Intent to Sue
13 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-
14 02254”) (“December 4, 2019 Notice”) that provided notice of alleged violations of Health &
15 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DINP
16 contained in certain Duffel Bags with Polymer Components sold, manufactured, and/or
17 distributed by Defendant in California. No public enforcer has commenced or diligently
18 prosecuted the allegations set forth in the December 4, 2019 Notice.

19 1.4.5 On or about February 12, 2020, CAG served a “60-Day Notice of Intent to Sue
20 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-
21 00333”) (“February 12, 2020 Notice”) that provided Defendant with notice of alleged violations
22 of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
23 DINP contained in certain Rolling Luggage sold, manufactured, and/or distributed by Defendant
24 in California. No public enforcer has commenced or diligently prosecuted the allegations set
25 forth in the February 12, 2020 Notice.

26 1.4.6 On or about March 13, 2020, CAG served a “60-Day Notice of Intent to Sue for
27 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-00715”)
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1 (“March 13, 2020 Notice”) that provided Defendant with notice of alleged violations of Health &
2 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
3 contained in certain Backpacks with Plastic Components sold, manufactured, and/or distributed
4 by Defendant in California. No public enforcer has commenced or diligently prosecuted the
5 allegations set forth in the March 13, 2020 Notice.

6 1.4.7 On or about June 24, 2020, CAG served a “60-Day Notice of Intent to Sue for
7 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-01566”)
8 (“June 24, 2020 Notice”) that provided Defendant with notice of alleged violations of Health &
9 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
10 contained in certain Backpacks with Plastic Components sold, manufactured, and/or distributed
11 by Defendant in California. No public enforcer has commenced or diligently prosecuted the
12 allegations set forth in the June 24, 2020 Notice.

13 1.4.8 On or about July 1, 2020, CAG served a “60-Day Notice of Intent to Sue for
14 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-01675”)
15 (“July 1, 2020 Notice”) that provided Defendant with notice of alleged violations of Health &
16 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
17 contained in certain Crossbody Bags with PVC Components sold, manufactured, and/or
18 distributed by Defendant in California. No public enforcer has commenced or diligently
19 prosecuted the allegations set forth in the July 1, 2020 Notice.

20 1.4.9 On or about September 10, 2020, CAG served a “60-Day Notice of Intent to Sue
21 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-
22 02305”) (“September 10, 2020 Notice”) that provided Defendant with notice of alleged
23 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
24 exposures to DEHP contained in certain Crossbody Bags with PVC Components sold,
25 manufactured, and/or distributed by Defendant in California. No public enforcer has
26 commenced or diligently prosecuted the allegations set forth in the September 9, 2020 Notice.
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1 1.4.10 On or about October 16, 2020, CAG served a “60-Day Notice of Intent to Sue for
2 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-02774”)
3 (“October 16, 2020 Notice”) that provided Defendant with notice of alleged violations of Health
4 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
5 contained in certain Crossbody Bags with PVC Components sold, manufactured, and/or
6 distributed by Defendant in California. No public enforcer has commenced or diligently
7 prosecuted the allegations set forth in the October 16, 2020 Notice.

8 1.4.11 On or about June 4, 2021, CAG served a “60-Day Notice of Intent to Sue for
9 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2021-01368”)
10 (“June 4, 2021 Notice”) that provided Defendant with notice of alleged violations of Health &
11 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
12 contained in certain Crossbody Bags sold, manufactured, and/or distributed by Defendant in
13 California. No public enforcer has commenced or diligently prosecuted the allegations set forth
14 in the June 4, 2021 Notice.

15 **1.5 Complaint**

16 1.5.1 On November 7, 2019 CAG filed a Complaint for civil penalties and injunctive
17 relief (“Complaint 1”) in Los Angeles County Superior Court, Case No. 19STCV40125.
18 Complaint 1 alleges, among other things, that Proposition 65 was violated for failure to allegedly
19 give clear and reasonable warnings of alleged exposure to DINP in certain consumer products
20 Defendant distributed and/or sold in California.

21 1.5.2 On March 16, 2020 CAG filed a Complaint for civil penalties and injunctive relief
22 (“Complaint 2”) in Los Angeles County Superior Court, Case No. 20STCV10456, against
23 Defendant. Complaint 2 alleges, among other things, that Defendant violated Proposition 65 for
24 allegedly failing to give clear and reasonable warnings of alleged exposure to DINP and DEHP
25 in certain consumer products Defendant distributed and/or sold in California.

26 1.5.3 On August 24, 2020 CAG filed a Complaint for civil penalties and injunctive
27 relief (“Complaint 3”) in Los Angeles County Superior Court, Case No. 20STCV32288, against
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1 Defendant. Complaint 3 alleges, among other things, that Defendant violated Proposition 65 for
2 allegedly failing to give clear and reasonable warnings of alleged exposure to DINP in certain
3 consumer products Defendant distributed and/or sold in California.

4 1.5.4 On October 16, 2019 CAG filed a Complaint for civil penalties and injunctive
5 relief (“Complaint 4”) in Los Angeles County Superior Court, Case No. 19STCV37064.

6 Complaint 4 alleges, among other things, that Proposition 65 was violated for failure to allegedly
7 give clear and reasonable warnings of alleged exposure to DEHP in certain consumer products
8 Defendant distributed and/or sold in California.

9 1.5.5 On September 4, 2020 CAG filed a Complaint for civil penalties and injunctive
10 relief (“Complaint 5”) in Los Angeles County Superior Court, Case No. 20STCV34003, against
11 Defendant. Complaint 5 alleges, among other things, that Defendant violated Proposition 65 for
12 allegedly failing to give clear and reasonable warnings of alleged exposure to DEHP in certain
13 consumer products Defendant distributed and/or sold in California.

14 1.5.6 On January 20, 2021 CAG filed a Complaint for civil penalties and injunctive
15 relief (“Complaint 6”) in Los Angeles County Superior Court, Case No. 21STCV02336.
16 Complaint 6 alleges, among other things, that Proposition 65 was violated for failure to allegedly
17 give clear and reasonable warnings of alleged exposure to DEHP in certain consumer products
18 Defendant distributed and/or sold in California.

19 **1.6 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
22 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Los
23 Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
24 and resolution of the allegations against Defendant contained in the Complaint, and of all claims
25 which were or could have been raised by any person or entity based in whole or in part, directly
26 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

27 **1.7 No Admission**

1 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into
2 this Consent Judgment pursuant to a full and final settlement of any and all claims between the
3 Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall
4 be construed as an admission by the Parties of any material allegation in the Notice or the
5 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind, including
6 without limitation, any admission concerning any alleged or actual violation of Proposition 65 or
7 any other statutory, regulatory, common law, or equitable doctrine, including but not limited to the
8 meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as
9 used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor
10 compliance with its terms, shall constitute or be construed as an admission by the Parties of any
11 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
12 Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be
13 offered or admitted as evidence in any administrative or judicial proceeding or litigation in any
14 court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or
15 impair any right, remedy, argument, or defense the Parties may have in any other or future legal
16 proceeding, except as expressly provided in this Consent Judgment.

17 **2. DEFINITIONS**

18 2.1 “PUBLIC RELEASE COVERED PRODUCTS” means:

19 (a) Suitcases containing Di Isononyl Phthalate (DINP), specifically Suitcases
20 with Plastic Components containing DINP, with exemplars including but not
21 limited to, Limited Too suitcases, and other suitcases and luggage items with Plastic
22 Components;

23 (b) Duffel Bags with Polymer Components containing DINP, with exemplars
24 including but not limited to, Blue Rolling Duffel Bag with Patterned Design and
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1 Reflective Handle, and other duffel bags and luggage items with Polymer
2 Components;

3 (c) Suitcases with Polymer Components containing DINP, with exemplars
4 including but not limited to, Blue Rolling Luggage with Owl Design,

5 (d) Dress for Kids with Plastic Components containing Bis(2-ethylhexyl)
6 Phthalate (DEHP), with exemplars including but not limited to, Kooba Kids Girls
7 Fashion Dress

8 (e) Children's Bag containing Bis(2-ethylhexyl) Phthalate (DEHP),
9 specifically, Crossbody Bag with PVC Components containing DEHP, with
10 exemplars including but not limited to, Crossbody Small Purse, Glitter Shoulder
11 Bag.

12 (f) Crossbody Bag with PVC Components containing DEHP, with exemplars
13 including but not limited to, Glittered Cross Body Bag,

14 (g) Backpack with Plastic Components containing DEHP, with exemplars
15 including but not limited to, Holographic Glitter Backpack,

16 (h) Kids Backpacks containing Bis(2-ethylhexyl) Phthalate (DEHP),
17 specifically, Backpack with Plastic Components containing DEHP, with exemplars
18 including but not limited to, Girls Access Backpacks, Accessories 22 Backpacks

19 2.2 "PRIVATE RELEASE COVERED PRODUCTS" means:

20 (a) Suitcases containing Di Isononyl Phthalate (DINP), specifically Suitcases
21 with Plastic Components containing DINP, with exemplars including but not
22 limited to, Limited Too suitcases, and other suitcases and luggage items with
23 Plastic Components;

24 (b) Travel Gear containing Di Isononyl Phthalate (DINP), specifically Duffel
25 Bags with Polymer Components containing DINP, with exemplars including but
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1 not limited to, Blue Rolling Duffel Bag with Patterned Design and Reflective
2 Handle, and other duffel bags and luggage items with Polymer Components;

3 (c) Children’s Accessories containing Di Isononyl Phthalate (DINP),
4 specifically Suitcases with Polymer Components containing DINP, with
5 exemplars including but not limited to, Blue Rolling Luggage with Owl Design,
6 and other children’s suitcases, luggage, and accessory items with with Polymer
7 Components;

8 (d) Kids Clothing containing Bis(2-ethylhexyl) Phthalate (DEHP),
9 specifically, Dress for Kids with Plastic Components containing DEHP, with
10 exemplars including but not limited to, Kooba Kids Girls Fashion Dress and other
11 items of apparel for kids with plastic components;

12 (e) Children’s Bag containing Bis(2-ethylhexyl) Phthalate (DEHP),
13 specifically, Crossbody Bag with PVC Components containing DEHP, with
14 exemplars including but not limited to, Crossbody Small Purse, Glitter Shoulder
15 Bag, and other children’s bags, shoulder bags, and crossbody bags with PVC
16 components;

17 (f) Fashion Accessories containing Bis(2-ethylhexyl) Phthalate (DEHP),
18 specifically, Crossbody Bag with PVC Components containing DEHP, with
19 exemplars including but not limited to, Glittered Cross Body Bag, and other
20 Fashion Accessories and Bags with PVC components, including tote bags,
21 handbags, fanny packs, shoulder bags, lunch bags, backpacks, and other bags;

22 (g) Fashion Accessories containing Bis(2-ethylhexyl) Phthalate (DEHP),
23 specifically, Backpack with Plastic Components containing DEHP, with
24 exemplars including but not limited to, Holographic Glitter Backpack, and other
25 Fashion Accessories and Backpacks with Plastic components, including tote bags,
26 handbags, fanny packs, shoulder bags, lunch bags, mini backpacks, full size
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1 backpacks, accessories (pencil cases, tablet cases, journals, notebooks, stationery
2 sets) and other bags; and,

3 (h) Kids Backpacks containing Bis(2-ethylhexyl) Phthalate (DEHP),
4 specifically, Backpack with Plastic Components containing DEHP, with
5 exemplars including but not limited to, Girls Access Backpacks, Accessories 22
6 Backpacks, and other Backpacks with Plastic components, including mini
7 backpacks, full size backpacks, and accessories (pencil cases, tablet cases,
8 journals, notebooks, stationery sets).

9 The Covered Products are limited to those sold by or supplied by Defendant to
10 downstream wholesalers, downstream distributors, dealers, or retailers for further distribution
11 and/or retail sale to consumers (as Defendant itself does not sell products directly to consumers).

12 2.3 “Effective Date” means the date that this Consent Judgment is approved by the
13 Court.

14 2.4 “DEHP” means Di (2-ethylhexyl) Phthalate, also known as Diethyl Hexyl
15 Phthalate and Bis (2-ethylhexyl) Phthalate

16 2.5 “DINP” means Diisononyl Phthalate.

17 2.6 “Listed Chemicals” means DEHP and DINP.

18 2.7 “Notices” means the Notices of Violation identified in Paragraph 1.4.

19 2.8 “Covered Products” means Public Release Covered Products and Private Release
20 Covered Products collectively.

21 **3. INJUNCTIVE RELIEF/REFORMULATION AND WARNINGS**

22 3.1 **Reformulation.** Beginning 30 days after the Effective Date, Defendant shall not
23 distribute manufacture or offer for sale the following:

24 (a) Covered Products defined in Section 2.1(a) through 2.1(c) and 2.2(a) through 2.2
25 (c) above that contain DINP in an amount greater than 0.1% by weight (1000 ppm); and,

26 (b) Covered Products defined in Section 2.1(d) through 2.1(h) and 2.2(d) through
27 2.2.(h) above that contain DEHP in an amount greater than 0.1% by weight (1000 ppm).

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2 3.2 **Warning Labels**. For any Covered Products identified and described specifically
3 by style number, SKU number, style name, UPC code, or other identifier as an exemplar in any
4 of the “60-Day Notices of Intent to Sue for Violation of the Safe Drinking Water and Toxic
5 Enforcement Act of 1986” outlined in Section 1.4 above (“Covered SKUs/Styles”), a Proposition
6 65-compliant warning shall be placed on this specific subset of Covered Products still existing in
7 the Defendants’ inventory (or purchased but not yet delivered) as of the Effective Date, prior to
8 being distributed or offered for sale . Covered SKUs/Styles include only luggage and suitcase
9 style numbers LTD760 to 765, dress style number FF178309K, backpack style numbers
10 123765RS and 124245FV, and cross body bag styles LDT713, LTD714, LTD724 and LTD770.
11 This labeling requirement does not apply to inventory of Covered SKUs/Styles that may be in
12 the possession of retailers or third-party wholesalers, dealers, or distributors as of the Effective
13 Date, as those items are not within Defendant’s control. Any Covered SKUs/Styles that were
14 distributed, offered for sale, or sold by Defendant or by any other party to any wholesalers,
15 distributors, retailers, or consumers prior to the Effective Date are not subject to this Section 3.2
16 requirement to place Proposition 65 warnings on the products, as those Covered Products are no
17 longer in Defendant’s inventory nor within the control of Defendant. Any warning provided
18 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,
19 and be prominently placed with such conspicuousness as compared with other words, statements,
20 designs, or devices as to render it likely to be read and understood by an ordinary individual
21 under customary conditions before purchase or use.
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23 3.3 Reformulation of any product shall not release liability for past violations of sale
24 of non-compliant products. Liability for past violations of sale of non-compliant products is
25 released as stated in Section 5 of this Consent Judgment.

26 3.4 If Proposition 65 warnings for DINP or DEHP should no longer be required under
27 California laws or regulations, Defendant shall not have any further obligations pursuant to this
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1 Consent Judgment. If Proposition 65 limits for DINP or DEHP are implemented, revised or
2 amended under California laws or regulations such that they would impose a standard other than
3 the 1,000 ppm limitation set forth in the reformulation requirements specified in Sections 3.1(a)
4 and 3.1(b), Defendant’s compliance with such California laws or regulations shall not be
5 considered a breach of this Consent Judgment.

6 3.5 The distribution, offering for sale, or sale by a party other than Defendant (such as
7 a retailer or distributor) of any Covered Products that are no longer in Defendant’s inventory,
8 control or possession as of the Effective Date as described in Sections 2.1 and 2.2, and that may
9 be in the control or possession of downstream wholesalers, downstream distributors, retailers or
10 consumers, shall not be considered a breach of this Consent Judgment if those products are not
11 reformulated or do not have the applicable warnings as specified in Sections 3.1 and 3.2
12 respectively.

13 **4. SETTLEMENT PAYMENT**

14 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant
15 shall pay a total of four hundred and fifty thousand dollars and zero cents (\$450,000.00) in full
16 and complete settlement of any and all claims for civil penalties, damages, attorney’s fees, expert
17 fees or any other claim for costs, expenses or monetary relief of any kind for claims that were or
18 could have been asserted in the Notice or Complaint, as follows:

19 4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling One hundred
20 and fifty-four thousand, three hundred dollars (\$154,300.00) as follows for alleged civil penalties
21 pursuant to Health & Safety Code § 25249.12:

22 (a) Defendant will issue one check made payable to the State of California’s Office of
23 Environmental Health Hazard Assessment (“OEHHA”) in the amount of one hundred and fifteen
24 thousand and seven hundred and twenty five dollars (\$115,725.00) representing 75% of the total
25 civil penalty and Defendant will issue a second check to CAG in the amount of thirty eight
26 thousand five hundred and seventy five dollars (\$38,575.00) representing 25% of the total civil
27 penalty;
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1 (b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a
2 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
3 \$115,725.00. Defendant will also issue a 1099 to CAG in the amount of \$38,575.00 and deliver
4 it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly
5 Hills, California 90212.

6 4.1.2 **Additional Settlement Payments:** Defendant shall issue one check for one
7 hundred and fifteen thousand and seven hundred dollars (\$115,700.00) to “Consumer Advocacy
8 Group, Inc.” pursuant to Health & Safety Code § 25249.7(b) and
9 California Code of Regulations, Title 11 § 3203(d). CAG will use this portion of the Total
10 Settlement Payment as follows, eighty five percent (85%) for fees of investigation, purchasing
11 and testing for the Proposition 65 Listed Chemical in various products, and for expert fees for
12 evaluating exposures through various mediums, including but not limited to consumer product,
13 occupational, and environmental exposures to the Proposition 65 Listed Chemical, and the cost
14 of hiring consulting and retaining experts who assist with the extensive scientific analysis
15 necessary for those files in litigation and to offset the costs of future litigation enforcing
16 Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative costs
17 incurred during investigation and litigation to reduce the public’s exposure to the Proposition 65
18 Listed Chemicals by notifying those persons and/or entities believed to be responsible for such
19 exposures and attempting to persuade those persons and/or entities to reformulate their products
20 or the source of exposure to completely eliminate or lower the level of the Proposition 65 Listed
21 Chemicals including but not limited to costs of documentation and tracking of products
22 investigated, storage of products, website enhancement and maintenance, computer and software
23 maintenance, investigative equipment, CAG’s member’s time for work done on investigations,
24 office supplies, mailing supplies and postage Within 30 days of a request from the Attorney
25 General, CAG shall provide to the Attorney General copies of documentation demonstrating how
26 the above funds have been spent. CAG shall be solely responsible for ensuring the proper
27 expenditure of such additional settlement payment.

1 4.1.3 **Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check in
2 the amount of One hundred and eighty thousand dollars (\$180,000.00) payable to “Yeroushalmi
3 & Yeroushalmi” as complete reimbursement for any and all reasonable investigation fees and
4 costs, attorneys’ fees, expert fees, and any and all other costs and expenses incurred as a result of
5 investigating, bringing this matter to the Defendant’s attention, litigating, negotiating a
6 settlement in the public interest, and seeking and obtaining court approval of this Consent
7 Judgment.

8 4.2 Other than the payment to OEHHA described above, all payments referenced in
9 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
10 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
11 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard
12 Assessment, OEHHA, 1001 I Street, Mail Stop 12-B Sacramento, California 95812, Attn: Mike
13 Gyurics. Defendant shall provide written confirmation to CAG concurrently with payment to
14 OEHHA.

15 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

16 5.1 As to the PUBLIC RELEASE COVERED PRODUCTS, this Consent Judgment
17 is a full, final, and binding resolution between CAG, on behalf of itself and in the public interest,
18 and Defendant and their owners, officers, directors, insurers, employees, parents, shareholders,
19 divisions, subdivisions, subsidiaries, partners, affiliates, sister companies, predecessors, and their
20 successors and assigns (“Defendant Releasees”), and all entities to whom Defendant directly or
21 indirectly distribute or sell PUBLIC RELEASE COVERED PRODUCTS, including, but not
22 limited to, downstream distributors, downstream wholesalers, customers, retailers, marketplace
23 hosts, franchisees, cooperative members, licensees, and the successors and assigns of any of
24 them, who may use, maintain, distribute or sell PUBLIC RELEASE COVERED PRODUCTS
25 (“Downstream Defendant Releasees”), of all claims for alleged or actual violations of
26 Proposition 65 for alleged exposures to the Listed Chemicals from the PUBLIC RELEASE
27 COVERED PRODUCTS manufactured, distributed or sold by Defendant up through the
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1 Effective Date as set forth in the Notices and Complaint. Defendant and Defendant Releasees’
2 compliance with this Consent Judgment shall constitute compliance with Proposition 65 with
3 respect to alleged exposures to the Listed Chemicals from the PUBLIC RELEASE COVERED
4 PRODUCTS sold by Defendant Releasees or Downstream Defendant Releasees after the
5 Effective Date. Nothing in this Section affects CAG’s right to commence or prosecute an action
6 under Proposition 65 against any person other than Defendant, Defendant Releasees, or
7 Downstream Defendant Releasees (collectively, “Released Parties”).

8 5.2 As to the PRIVATE RELEASE COVERED PRODUCTS, this Consent Judgment is a
9 full, final, and binding resolution between CAG, acting in its individual capacity, on the one
10 hand, and (a) Mystic Apparel and its owners, parents, subsidiaries, affiliates, sister and related
11 companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors,
12 successors, and assigns (collectively “Releasees”) and (b) all entities to whom Releasees directly
13 or indirectly provide, distribute, or sell the PRIVATE RELEASE COVERED PRODUCTS,
14 including but not limited to downstream distributors, downstream wholesalers, customers,
15 retailers, franchisees, cooperative members, and licensees (“Downstream Releasees”), on the
16 other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or
17 common law claim that has been, could have been or may in the future be asserted against the
18 Releasees and Downstream Releasees regarding exposing persons to the Listed Chemicals and
19 the failure to warn about exposure to the Listed Chemicals arising only in connection with the
20 PRIVATE RELEASE COVERED PRODUCTS manufactured, shipped, and/or otherwise
21 distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective
22 Date. The PRIVATE RELEASE COVERED PRODUCTS are limited to those sold by Mystic.

23 5.3 CAG on behalf of itself, its past and current agents, representatives, attorneys,
24 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
25 indirectly, any form of legal action and releases all claims, including, without limitation, all
26 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
27 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
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1 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
2 fixed or contingent (collectively "Claims"), against the Released Parties arising from any actual
3 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the
4 Covered Products manufactured, distributed or sold by the Released Parties through the Effective
5 Date regarding any actual or alleged failure to warn about exposure to the Listed Chemicals from
6 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby
7 waives any and all rights and benefits which it now has, or in the future may have, conferred
8 upon it with respect to Claims regarding the Covered Products manufactured, distributed or sold
9 by the Released Parties through the Effective Date arising from any violation of Proposition 65
10 or any other statutory or common law regarding the failure to warn about exposure to the Listed
11 Chemicals from the Covered Products by virtue of the provisions of section 1542 of the
12 California Civil Code, which provides as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
14 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
16 RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
17 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
18 DEBTOR OR RELEASED PARTY.

19 CAG understands and acknowledges that the significance and consequence of this waiver of
20 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
21 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
22 violation of Proposition 65 or any other statutory or common law regarding the Covered
23 Products manufactured, distributed or sold by the Released Parties through the Effective Date
24 regarding the failure to warn about actual or alleged exposure to the Listed Chemicals from the
25 Covered Products, CAG will not be able to make any claim for those damages, penalties or other
26 relief against the Released Parties. Furthermore, CAG acknowledges that it intends these
27 consequences for any such Claims arising from any violation of Proposition 65 or any other
28 statutory or common law regarding the failure to warn about exposure to the Listed Chemicals
from the Covered Products as may exist as of the date of this release but which CAG does not

1 know exist, and which, if known, would materially affect their decision to enter into this Consent
2 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
3 error, negligence, or any other cause.

4 **6. ENTRY OF CONSENT JUDGMENT**

5 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
6 California Health & Safety Code § 25249.7(f). The Parties agree to act in good faith to obtain
7 Court approval of the Consent Judgment. Upon entry of the Consent Judgment, CAG and
8 Defendant waive their respective rights to a hearing and trial on the allegations in the Notices
9 and Complaint.

10 6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
11 Judgment and any and all prior agreements between the Parties merged herein shall terminate
12 and become null and void, and the actions shall revert to the status that existed prior to the
13 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
14 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
15 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
16 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
17 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

18 6.3 Upon entry of an order approving this Consent Judgment, the Complaint in this
19 action shall be deemed amended to include the claims raised in the Notices as detailed in Section
20 1.4 and 1.5.

21 **7. MODIFICATION OF JUDGMENT**

22 7.1 This Consent Judgment may be modified only upon written agreement of the
23 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
24 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

25 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
26 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
27
28

1 **8. RETENTION OF JURISDICTION**

2 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

4 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
5 prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.

6 **9. SERVICE ON THE ATTORNEY GENERAL**

7 9.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
8 California Attorney General so that the Attorney General may review this Consent Judgment
9 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
10 Attorney General has received the aforementioned copy of this Consent Judgment, CAG may
11 then submit it to the Court for approval.

12 **10. ENTIRE AGREEMENT**

13 10.1 This Consent Judgment contains the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
15 negotiations, commitments and understandings related hereto. No representations, oral or
16 otherwise, express or implied, other than those contained herein have been made by any party
17 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
18 deemed to exist or to bind any of the Parties.

19 **11. ATTORNEY FEES**

20 11.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its
21 own attorneys’ fees and costs in connection with the claims resolved in this Consent Judgment.

22 **12. GOVERNING LAW**

23 12.1 The validity, construction, terms, and performance of this Consent Judgment shall
24 be governed by the laws of the State of California, without reference to any conflicts of law
25 provisions of California law.

26 12.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
27 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
28

1 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
2 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant
3 may provide written notice to CAG of any asserted change in the law, and shall have no further
4 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
5 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
6 Defendant from any obligation to comply with any other pertinent state or federal law or
7 regulation.

8 12.3 The Parties, including their counsel, have participated in the preparation of this
9 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
10 Consent Judgment was subject to revision and modification by the Parties and has been accepted
11 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
12 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
13 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
14 agrees that any statute or rule of construction providing that ambiguities are to be resolved
15 against the drafting Party should not be employed in the interpretation of this Consent Judgment
16 and, in this regard, the Parties hereby waive California Civil Code section 1654.

17 **13. EXECUTION AND COUNTERPARTS**

18 13.1 This Consent Judgment may be executed in counterparts and by means of
19 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
20 one document and have the same force and effect as original signatures.

21 **14. NOTICES**

22 14.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.
23 If to CAG:

24 Reuben Yeroushalmi
25 reuben@yeroshalmi.com
26 Yeroushalmi & Yeroushalmi
27 9100 Wilshire Boulevard, Suite 240W
28 Beverly Hills, CA 90212

If to Defendant MYSTIC APPAREL, LLC:

1 Georgia C. Ravitz, Esq.
2 gravitz@wsgr.com
3 WILSON SONSINI GOODRICH & ROSATI
4 1700 K Street NW, Fifth Floor
Washington, DC 20006

5 Scott A. Cohn, Esq.
6 scohn@wsgr.com
7 WILSON SONSINI GOODRICH & ROSATI
8 1301 Ave. of the Americas, 40th Floor
9 New York, NY 10019

10 **15. AUTHORITY TO STIPULATE**

11 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
12 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
13 of the Party represented and legally to bind that party.

14 AGREED TO:

AGREED TO:

15 Date: July 19, 2021

16 Date: 07/23/2021, 2021

17 Michael Marcus

18 Andy M Jha

19 Name: Michael Marcus

20 Name: Andy M Jha

21 Title: Director

22 Title: CFO

23 CONSUMER ADVOCACY GROUP, INC.

MYSTIC APPAREL, LLC

24 **IT IS SO ORDERED.**

25 Date: _____

26 JUDGE OF THE SUPERIOR COURT